the accused in a less advantageous position than if he allowed his plea of guilty to remain. The fact that the former plea may be explained is not a sufficient protection to the accused. It "places upon him the burden of disproving a fact which does not exist, for the withdrawal eradicated it. It brings him before the jury under the heavy cloud of suspicion created by his plea of guilty when he is entitled to come before the jury with the presumption of innocence shielding him It makes him prove again that his plea was wrongly entered when that fact has already been judicially ascertained and settled by a court of competent jurisdiction."[16] The probable frequency with which circumstances allowing this point have arisen and the scarcity of decisions thereon would seem to justify the inference that no appeal has been taken, because, either prosecutors have withheld or the courts have excluded such evidence.

"PERSONAL INJURY IN THE COURSE OF EMPLOYMENT" UNDER WORKMEN'S COMPENSATION ACT.—While the general purpose of the workmen's compensation acts which have been adopted in the various states is the same, and their phraseology often similar and often resembling the English Workmen's Compensation Act, yet they vary in many details. One respect in which they widely differ is in the clause which defines the injuries for which compensation is to be given, although the acts may be divided into two very distinct classes as regards this clause. The English act, which is representative of one of the classes, provides that compensation shall be given for "personal injuries by accident arising out of and in the course of the employment." [1] The majority of the American statutes follow the English act in providing for "personal injuries by accident." [2] Several of them, on the other hand, provide that compensation shall be given for "personal injuries," without adding the qualification "by accident." [3] What is the

[16] State *v.* Carta, *supra,* dissenting opinion.

[1] Act of 60 & 61 Vict. c. 37, § 1.

[2] The American acts which provide for "personal injuries by accident" are the following: Alaska (Laws 1915, c. 71, § 4); Arizona (Code, § 3164); Colorado (Laws 1915, c. 179, § 8); Illinois (Act of June 28, 1913, § 1); Indiana (Laws 1915, c. 106, §§ 2, 8, 20, 76d); Kansas (Laws 1911, c. 218, 1); Louisiana (Act approved June 18, 1914, §§ 2, 28); Maine (Laws 1915, c. 295, §§ 8, 11); Maryland (Laws 1914, c. 800, §§ 14, 45, 62); Minnesota (Laws 1913, c. 467, §§ 9, 34); Nebraska (Laws 1913, c. 198, §§ 9, 10, 27); Nevada (Laws 1913, c. 111, § 1); New Hampshire (Laws 1911, c. 163, § 3); New Jersey (Laws 1911, c. 95, § 7); New York (Consolidated Laws, c. 31, § 206; c. 67, §§ 10, 3 (7)); Oklahoma (Act approved March 22, 1915, Art. 1, § 3 (7)); Oregon (Laws 1913, §§ 12, 21, 22); Pennsylvania (Laws 1915, Act No. 338, § 301); Rhode Island (Laws 1912, c. 831, Art. II, §§ 1, 2); Vermont (Acts of 1915, c. 164). See Digest of Workmen's Compensation Laws, 4 ed., by F. R. Jones.

[3] The American acts which provide for "personal injuries," as distinguished from "personal injuries by accident," are the following: California (Laws 1913, c. 176, § 12); Connecticut (Laws 1913, c. 138, Pt. B, § 1); Iowa (Laws 1913, c. 147, §§ 2477-m, m. 1); Massachusetts (Acts of 1911, c. 751, Pt. II, §§ 1-2); Michigan (Acts of 1912, No. 10, Pt. II, §§ 1, 2); Montana (Laws 1915, c. 96, §§ 6q, 16, 16j); Ohio (Code, §§ 1465-

effect of this divergence in the wording of the acts, that is, what is the difference in practical and legal effect between the simple "personal injury" and "personal injury by accident?" [4]

There can be no doubt that the term "personal injuries" is more comprehensive than the term "personal injuries by accident," or similar phrases, such as "accidental personal injuries," or "personal injuries accidentally sustained." As was said in the English case of *Fenton* v. *Thorley*,[5] "The words 'by accident' are introduced parenthetically as it were to qualify the word 'injury' confining it to a certain class of injuries; and excluding other classes." The phrase "personal injury" without the qualifying words "by accident," which are used in a few of the acts adopted in this country, has been held to cover every personal injury and disease which arises out of and in the course of the employment, unless the words of the act expressly or by direct implication exclude it, although the injury does not result from such an occurrence as would be called an accident under the English act, or a similar one. Thus, in the recent case of *In re Madden* (Mass.), 111 N. E. 379, it was held that a woman was entitled to compensation under the Massachusetts act as having sustained a simple "personal injury," where a preexisting heart disease was aggravated to the point of disablement by the muscular exertion required by her employment performed in its regular manner. This case clearly shows that the term "personal injury" is a broader one than "personal injury by accident," for the injury in this case—and there can be no doubt that the employee sustained an injury—was not due to an accident, as defined by the English courts or those of this country construing acts identical with the English act in this particular. That the element of accident did not exist here can be seen by ascertaining what the word accident includes. The courts define an accident as used in these acts as, "an unlooked for or untoward event which was not expected or designed." [6] In other words, an accident involves the idea of something fortuitous or unexpected, and if the employee is doing his ordinary work in an ordinary way, as was true in the instant case, and the primary cause of the workman's incapacity is disease, or an impaired physical condition, it is not a "personal injury by accident." [7]

But if the fortuitous or unexpected element enters into the occurence it becomes a personal injury by accident and not a mere

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68); Texas (Laws 1913, c. 179, Pt. I, §§ 1, 3); Washington (Rem. & Bal. Code, §§ 6604-3, 5, 6); West Virginia (Laws 1913, c. 10, § 25); Wyoming (Laws 1911, c. 50, § 2394-3). See Digest of Workmen's Compensation Laws, 4 ed., by F. R. Jones.

[4] For a discussion of what is an injury "arising out of and in the course of the employment," see 3 VA. L. REV. 232.

[5] [1903] A. C. 443, 448.

[6] Bryant *v.* Fissell, 84 N. J. L. 72, 86 Atl. 458, citing Fenton *v.* Thorley, *supra*.

[7] Hensey *v.* White, [1900] 1 Q. B. 481; Broderick *v.* London County Council, [1908] 2 K. B. 807; Steel *v.* Cammell, [1905] 2 K. B. 252; Eke *v.* Hart-Dyke, [1910] 2 K. B. 677.

personal injury. Thus, in the English case of *Broardman* v. *Scott,* [8] a workman in lifting a heavy beam found that it was not evenly balanced on his shoulder and in order to prevent its falling exerted additional force and in so doing ruptured several fibers of the muscles of his back which incapacitated him for work. He was held to have sustained a personal injury by accident. In this case [9] it was said by Collin, M. R., "We have in the present case, in my opinion, the element which is said to be essential to an accident, namely, that it should be something fortuitous and unexpected. He was obliged to adopt rapid means to meet a sudden emergency, and, in so doing, he caused an unexpected strain to the muscles of his back." It is true that the line is very close between the two classes of injuries, namely, those which can be said to result from an accident and those which do not. In some cases it is almost too vague to be distinguished if the facts are not closely examined, but nevertheless it is true that in one case the fortuitous and unexpected element must be present, while in the other class it is not necessary.

Further, where the injury is the gradual result of doing a particular kind of work, so that it would be impossible to refer the happening of the injury to any particular moment and it is the natural result of doing work of that particular character, then it is not the result of an accident.[10] But the simple term "personal injury" is held to include any injury which arises out of and in the course of the employment and which causes incapacity for work. The injuries for which compensation is given are not limited to those caused by external violence or physical force, or which are the natural result of an accident in the sense in which the word is generally used; and the holdings seem to go so far as to include any bodily injury.[11] The differences in holdings under the two types of phrases cannot be better illustrated than by comparing the holdings of the English and Massachusetts courts in regard to lead poisoning resulting from gradual accumulation of the poison in the course of the employment. The English court has held it not to be a personal

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[8] [1902] 1 K. B. 43.

[9] [1902] 1 K. B. 43, 46.

[10] Coe *v.* Fife Coal Co., [1909] S. C. 393; Steel *v.* Cammell, *supra.* Thus, in Broderick *v.* London County Council, *supra,* it was held that enteritis contracted by inhaling sewer gas while working in a sewer was not an injury by accident; and similarly in Eke *v.* Hart-Dyke, *supra,* it was held that death caused by ptomaine poisoning contracted by inhaling sewer gas while working around cesspools did not result from accident.

[11] In Hurle's Case, 217 Mass. 223, 104 N. E. 366, Ann. Cas. 1915C, 919, it was held that an employee sustained a personal injury within the meaning of the Massachusetts act when he lost the vision of both eyes by inhaling coal tar gas in the ordinary course of his employment. Rugg, C. J., said: "The difference between the English and Massachusetts acts in the omission of the words 'by accident' from our act, which occur in the English act as characterizing personal injuries, is significant that the element of accident was not intended to be imported in our act." Johnson's Case, 217 Mass. 388, 104 N. E. 735; In re Brightman, 220 Mass. 17, 107 N. E. 527 (death by heart disease held to be result of an injury within the act); In re Fisher, 220 Mass. 581, 108 N. E. 361.

injury by accident, [12] while the Massachusetts court has held it to be covered by the phrase "personal injury" not qualified by the word "accident." [13]

From the two cases last cited and others it seems that the phrase "personal injury by accident" does not include what are sometimes called occupational diseases, [14] while the simple term "personal injury" does include such diseases.[15] Many of the workmen's compensation acts, however, expressly provide for diseases either by expressly excluding or including them, or providing that compensation hall be given in certain enumerated cases.

LIABILITY OF MANUFACTURER TO PERSONS NOT IN PRIVY OF CONTRACT, FOR INJURY FROM DEFECTS IN THE ARTICLE SOLD.—The general rule is that the manufacturer of an article is not liable to third persons, not in privity of contract, for injury due to the negligent construction of such article.[1] Though the rule may bring about some hardship, and even result in injustice in individual cases, the policy of the law requires that there be a limit to liability imposed on persons for their negligence. The consequences of an opposite view would be far reaching and result in an enormous amount of litigation, which in the end would work great difficulty, especially in measuring the responsibility of the defendant.

But the law does impose a liability on the manufacturer of an article to an extent necessary to the protection and safety of third persons who come in contact with the product but who have no contractual relations with the producer. The basis of this liability must rest on some duty which the defendant owes to the public, and which he has neglected to carry out, to the injury of the plaintiff.[2] The cases which arise under this subject may be grouped into

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[12] Steel *v.* Cammell, *supra.*

[13] Johnson's Case, *supra.* The case of Adams *v.* Acme, etc., Co., 182 Mich. 157, 148 N. W. 485, 6 N. C. C. A. 482, which holds that poisoning by white lead was not within the Michigan act, can be distinguished from Johnson's Case on the ground the Michigan court read the word "accident" into the act partly because it was used in the title.

[14] Steel *v.* Cammell, *supra*; Broderick *v.* London County Council, *supra*; Liondale Bleach, Dye and Paint Works *v.* Riker, 85 N. J. L. 426, 89 Atl. 929.

[15] Hurle's Case, *supra.* See Industrial Commission of Ohio *v.* Brown (Ohio), 110 N. E. 744, 745, where it is said by Nichols, C. J: "This court, with much show of logic and also authority, could construe this phrase as did the courts below. It is not difficult to bring within the purview of the words 'personal injuries sustained in the course of employment' occupational diseases incurred in the course of employment. It can be further conceded that, had the Legislature, in enacting either the original or present law, desired to make plain its intention to exclude occupational diseases from participation in the fund, the exclusion could easily have been made by adding to the words 'personal injuries' the qualifying phrase 'by accident.'"

[1] Winterbottom *v.* Wright, 10 M. & W. 109; Goodlander Mill Co. *v.* Standard Oil Co., 63 Fed. 400, 27 L. R. A. 583.

[2] Thomas *v.* Winchester, 6 N. Y. 397, 57 Am. Dec. 455. See Van Winkle *v.* Am. Steam-Boiler Ins. Co., 52 N. J. L. 240, 19 Atl. 472.